

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

ERIC MENDEZ, individually and on
behalf of a class of similarly situated
individuals,

Plaintiff,

v.

PRICE SELF STORAGE
MANAGEMENT, INC.,

Defendant.

Case No. 3:15cv02077 AJB (JLB)

ORDER:

(1) GRANTING FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT AND MOTION
FOR FEES, COSTS AND
INCENTIVE AWARD; AND

(2) ENTERING FINAL
JUDGMENT AND DISMISSAL
WITH PREJUDICE

(Doc. Nos. 38, 39)

Pending before the Court are Plaintiff's Motion for Final Approval of Class Action Settlement, (Doc. No. 39,) and Plaintiff's Motion for Award of Attorneys' Fees, Expenses and Incentive Award (Doc. No. 38) (collectively, the "Motions"). The Court, having reviewed the papers filed in support of the Motions, having heard argument of counsel, and finding good cause appearing therein, hereby GRANTS Plaintiff's Motions and it is hereby ORDERED, ADJUDGED, and DECREED THAT:

1. Terms and phrases in this Order will have the same meaning as ascribed to them in the Parties' January 15, 2016, Class Action Settlement

1 Agreement (the “Settlement Agreement”)¹.

2 2. This Court has jurisdiction over the subject matter of this action and
3 over all Parties to the Action, including all Settlement Class Members.

4 3. On May 13, 2016, this Court granted Preliminary Approval of the
5 Settlement Agreement and preliminary certified a settlement class consisting of:

6 All Persons in the United States or its territories who at any point from
7 the beginning of time up through the date of this agreement: (a)
8 received at least one text message on his or her cellular telephone from
9 PSS; (b) responded to the text message with the response STOP; and
(c) received at least one additional text message from PSS.

10 4. Excluded from the Settlement Class are those persons who have
11 submitted valid and timely requests for exclusion pursuant to the Preliminary
12 Approval Order and the Notice to the Settlement Class. Valid and timely requests
13 for exclusion were received from the persons listed on Appendix 1 attached hereto
14 and incorporated into this Final Judgment. Those persons listed on Appendix 1 are
15 found to have validly excluded themselves from the Settlement in accordance with
16 the provisions of the Preliminary Approval Order, and are not bound by this Final
17 Judgment or the Release herein. Further, Class Members do not waive their right to
18 contact, in any way or for any purpose, any state or federal agency regarding the
19 activities of any party, nor do they waive any right to enjoy any benefits obtained
20 by a state or federal agency

21 5. The Court finds that the Notice and the Notice Plan implemented
22 pursuant to the Settlement Agreement, the Preliminary Approval Order of May 13,
23 2016 consisting of individual notice via first-class U.S. Mail postcard and the
24 Settlement Website, supplemented by telephone calls to the Class by Class Counsel,
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26 ¹ While the Settlement Agreement allows for uncashed funds to revert back to
27 Defendant, after further review, any uncashed funds will escheat to the State of
28 California in accordance with state law.

1 has been successfully implemented and was the best notice practicable under the
2 circumstances and: (1) constituted notice that was reasonably calculated, under the
3 circumstances, to apprise the Settlement Class Members of the pendency of the
4 Action, their right to object to or to exclude themselves from the Settlement
5 Agreement, and their right to appear at the Final Approval Hearing; (2) was
6 reasonable and constituted due, adequate, and sufficient notice to all persons
7 entitled to receive notice; and (3) met all applicable requirements of the Federal
8 Rules of Civil Procedure, the Due Process Clause, and the rules of the Court.

9 6. The Court finds that Defendants properly notified the appropriate state
10 and federal officials of the Settlement Agreement, pursuant to the Class Action
11 Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1715. The Court has reviewed the
12 substance of Defendants’ notice and accompanying materials, and finds that they
13 complied with all applicable requirements of CAFA.

14 7. This Court now affirms certification of the Settlement Class, gives
15 final approval to the Settlement, and finds that the Settlement Agreement is fair,
16 reasonable, adequate, and in the best interests of the Settlement Class. The
17 settlement consideration provided under the Settlement Agreement constitutes fair
18 value given in exchange for the release of the Released Claims against the Released
19 Parties. The Court finds that the consideration to be paid to members of the
20 Settlement Class is reasonable, considering the facts and circumstances of the
21 numerous types of claims and affirmative defenses asserted in the Action, and the
22 potential risks and likelihood of success of alternatively pursuing trial on the merits.

23 The complex legal and factual posture of this case, and the fact that the
24 Settlement Agreement is the result of arms’ length negotiations between the Parties,
25 including negotiations presided over by the Honorable Matthew Railey (Ret.),
26 support this finding.

27 8. The Court finds that both the Class Representative and Class Counsel
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1 adequately represented the Settlement Class for the purposes of litigating this matter
2 and entering into and implementing the Settlement Agreement. Accordingly, the
3 Settlement Agreement is hereby finally approved in all respects, and the Parties are
4 hereby directed to implement the Settlement Agreement according to its terms and
5 provisions. The Settlement Agreement is hereby incorporated into this Order in full
6 and will have the full force of an Order of this Court.

7 9. Subject to the terms and conditions of the Settlement Agreement, the
8 Court hereby dismisses the Action on the merits and with prejudice.

9 10. Upon the Effective Date, Plaintiff and each and every Settlement Class
10 Member who did not timely opt out of the Settlement Class—and to the extent a
11 Settlement Class Member is not an individual, all of its present, former, and future
12 direct and indirect parent companies, affiliates, subsidiaries, divisions, agents,
13 franchisees, successors, predecessors-in- interest, and all of the aforementioned's
14 present, former, and future officers, directors, employees, shareholders, attorneys,
15 agents, independent contractors; and, to the extent the Settlement Class Member is
16 an individual, any present, former, and future spouses, as well as the present,
17 former, and future heirs, executors, administrators, representatives, agents,
18 attorneys, partners, successors, predecessors-in- interest, and assigns of each of
19 them, will fully, finally, completely and forever, release, acquit and discharge Price
20 Self Storage Management, Inc. and any and all of its present or past heirs,
21 executors, estates, administrators, predecessors, successors, assigns, parents,
22 subsidiaries, associates, employers, employees, agents, consultants, independent
23 contractors, insurers, directors, managing directors, officers, partners, principals,
24 members, attorneys, accountants, financial and other advisors, investment bankers,
25 underwriters shareholders, lenders, auditors, investment advisors, legal
26 representatives, successors in interest, assigns and Persons, firms, trusts,
27 corporations, officers, directors, other individuals or entities in which Defendant has
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1 a controlling interest or which is affiliated with any of them, or any other
2 representatives of any of these Persons and entities, from any and all actual,
3 potential, filed, known or unknown, fixed or contingent, claimed or unclaimed,
4 suspected or unsuspected, claims, demands, liabilities, rights, causes of action,
5 contracts or agreements, extracontractual claims, punitive, treble, exemplary or
6 multiplied damages, expenses, costs, attorneys' fees, fines, penalties, awards,
7 interest (including pre-judgment interest), and all other obligations (including
8 "Unknown Claims" as defined below), whether in law or in equity, accrued or
9 unaccrued, direct, individual or representative, of every nature and description
10 whatsoever, whether based on the TCPA or any other federal, state, local, statutory
11 or common law or any other law, rule or regulation, including the law of any
12 jurisdiction outside the United States (including both direct, vicarious, and
13 derivative claims) against the Released Parties, or any of them, relating to, based
14 on, and/or arising out of the facts, claims, causes of action, damages alleged or
15 which could have been alleged in the Action, including any alleged violations of the
16 TCP A or any similar federal, state, local, statutory or common law or any other
17 similar law, rule or regulation.

18 11. Upon the Effective Date, the above release of claims and the
19 Settlement Agreement will be binding on, and will have res judicata and preclusive
20 effect on, all pending and future lawsuits or other proceedings maintained by or on
21 behalf of Plaintiff and all other Settlement Class Members and Releasing Parties.
22 All Settlement Class Members who have not been properly excluded from the
23 Settlement Class are hereby permanently barred and enjoined from filing,
24 commencing, prosecuting, intervening in, or participating (as class members or
25 otherwise) in any lawsuit or other action in any jurisdiction based on or arising out
26 of the Released Claims.

27 12. The Court approves the agreed-upon Fee Award to Class Counsel. The
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1 Court hereby awards to Class Counsel \$100,000 in attorneys' fees and costs. In this
2 Circuit, a 25% fee is the accepted "benchmark" in common fund cases. *Vizcaino v.*
3 *Microsoft Corp.*, 290 F.3d 1043, 1048-50 (9th Cir. 2002). In assessing the Fee
4 Award, the Court has considered the results achieved in this litigation, the risks of
5 litigation, the skill required of Class Counsel and the quality of their work, the
6 contingent nature of the fee and the financial burden carried by the Plaintiff, and
7 awards made in similar cases. In light of these factors, the Court finds this Fee
8 Award to be fair and reasonable, given that it represents, at 22%, which is less than
9 25% of the total settlement fund of \$450,000 made available to the Class, exclusive
10 of the value of the prospective relief contained in the Settlement Agreement.

11 13. The Court additionally finds this amount to be fair and reasonable
12 based upon a lodestar cross check. Class Counsel's reported lodestar as of the filing
13 of the Motion for Attorneys' Fees equaled \$83,894 and that additional work has
14 been done since that time. Class Counsel set forth the hours spent and experience of
15 each attorney working on the case and his or her corresponding billable rate. The
16 Court finds the rates charged to be appropriate and reasonable in light of the
17 experience of each attorney and that the hourly rates are in line with comparable
18 market rates. The Court finds the hours expended to be reasonable when compared
19 with the time and effort put forth by Class Counsel and supporting counsel in
20 investigating, litigating, and resolving this case, as well as in light of the results
21 achieved for the Settlement Class in terms of both monetary and injunctive relief.
22 Accordingly, the lodestar of \$83,894, when enhanced by a multiplier of 1.15, which
23 the Court finds reasonable and proper in light of the benefits to the Class, lodestars
24 applied in other similar matters, and the factors set forth in *Kerr v. Screen Extras*
25 *Guild, Inc.*, 526 F.2d 67 (9th Cir. 1975), provides a reasonable lodestar cross-check
26 in awarding Class Counsel's Fee Award of \$100,000.00. Class Counsel's total Fee
27 Award is inclusive of costs, which are likewise reasonable based on the
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1 documentation and sworn declarations submitted.

2 14. Defendant will pay the Fee Award pursuant to and in the manner
3 provided by the terms of the Settlement Agreement.

4 15. The Court approves the agreed Incentive Award of \$3,000.00, to Class
5 Representative Eric Mendez as an Incentive Award for her role as Class
6 Representative. The Court finds this Incentive Award to be reasonable in light of
7 the Class Representative's willingness and efforts with respect to taking on the risks
8 of litigation and helping achieve the results to be made available to the Settlement
9 Class. Such payment will be made pursuant to and in the manner provided by the
10 terms of the Settlement Agreement.

11 16. Except as otherwise set forth in this Order, the Parties will bear their
12 own costs and attorneys' fees.

13 17. This Court hereby directs entry of this Final Judgment based upon the
14 Court's finding that there is no just reason for delay of enforcement or appeal of this
15 Final Judgment notwithstanding the Court's retention of jurisdiction to oversee
16 implementation and enforcement of the Settlement Agreement.

17 18. Neither this Final Judgment and order of dismissal with prejudice, the
18 Settlement Agreement, the settlement that it reflects, nor any act, statement,
19 document, or proceeding relating to the Settlement:

20 (a) is, may be deemed, or will be used, offered, or received against
21 Defendant as an admission, concession, or evidence of the validity of any Released
22 Claims, the truth of any fact alleged by the Plaintiff, the deficiency of any defense
23 that has been or could have been asserted in the Action, or of any alleged
24 wrongdoing, liability, negligence, or fault of the Released Parties;

25 (b) is, may be deemed, or will be used, offered, or received against
26 Plaintiff or the Settlement Class as an admission, concession, or evidence of the
27 infirmity or strength of any claims raised in the Action, the truth or falsity of any
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1 fact alleged by Defendant, or the availability or lack of availability of meritorious
2 defenses to the claims raised in the Action;

3 (c) is, may be deemed, or will be construed against Plaintiff and the
4 Settlement Class or against Defendant as an admission or concession that the
5 consideration to be given hereunder represents an amount equal to, less than, or
6 greater than that amount that could have or would have been recovered after trial;

7 (d) is, may be deemed, or will be construed as or received in evidence as
8 an admission or concession against Plaintiff and the Settlement Class or against
9 Defendant that any of Plaintiff's claims are with or without merit and that damages
10 recoverable in the Action would have exceeded or would have been less than any
11 particular amount; or

12 (e) is, may be deemed, or will be used, offered, or received against
13 Defendant as an admission or concession with respect to any liability, negligence,
14 fault, or wrongdoing as against any Parties to the Agreement in any civil, criminal,
15 or administrative proceeding in any court, administrative agency, or other tribunal.

16 19. The Parties, without further approval from the Court, are hereby
17 permitted to agree to and to adopt such amendments, modifications, and expansions
18 of the Settlement Agreement and its implementing documents (including all
19 exhibits to the Settlement Agreement) so long as they are consistent in all material
20 respects with the Final Judgment and do not limit the rights of Settlement Class
21 Members.

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1 20. Without affecting the finality of this Final Judgment in any way, this
2 Court hereby retains continuing jurisdiction as to all matters relating to
3 administration, consummation, enforcement, and interpretation of the Settlement
4 Agreement and the Final Order, and for any other necessary purpose.

5 **IT IS SO ORDERED.**

6 Dated: August 22, 2016

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8 Hon. Anthony J. Battaglia
9 United States District Judge